BEFORE THE 1 BOARD OF VOCATIONAL NURSING 2 AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS 3 STATE OF CALIFORNIA 4 In the Matter of the Accusation Case No. VN-2009-3374 Against: 6 SAMANTHA DARLENE CELAYA OAH No. 2012030487 77-777 Country Club Dr., Apt. 31 Palm Desert, CA 92113 Vocational Nurse License No. VN 230030 10 11 Respondent. 12 13 **DECISION** 14 The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the 15 16 Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled 17 matter. 18 19 This Decision shall become effective on April 26, 2013. 20 IT IS SO ORDERED this 27th day of March, 2013. 21 22 23 Todd D'Braunstein, PT 24 President 25 26

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BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SAMANTHA DARLENE CELAYA, aka SAMANTHA DARLENE WOELKE, aka SAMANTHA DARLENE PENA,

Respondent.

Case No. VN-2009-3374

OAH No. 2012030487

AMENDED PROPOSED DECISION

This matter came on regularly for hearing on October 25, 2012, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Deputy Attorney General Marichelle S. Tahimic represented complainant, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (board).

Samantha Darlene Celaya, aka Samantha Darlene Woelke, aka Samantha Darlene Pena (respondent) represented herself.

Oral and documentary evidence was presented, and the matter was submitted on October 25, 2012.

This Amended Proposed Decision modifies the Proposed Decision dated November 26, 2012, to include language in the board's Standard Conditions of Probation, Probation Condition number 8, which was inadvertently omitted from the Proposed Decision.

FACTUAL FINDINGS

1. On September 28, 2007, the board issued respondent Vocational Nurse License number VN 230030. At all material times herein, respondent's license was in full force and effect and will expire on February 28, 2013, unless renewed.

- 2. On January 30, 2012, Teresa Bello-Jones, J.D., M.S.N., R.N., in her official capacity as Executive Officer of the board, signed the Accusation in Case No. VN-2009-3374. The Accusation requested that respondent's license be revoked or suspended because respondent was convicted of a drug-related crime stemming from her theft, possession, and use of controlled substances (First through Fourth, and Seventh Causes for Discipline); she falsified and/or made gross entries in hospital records (Fifth and Sixth Causes for Discipline); and engaged in unprofessional and dishonest conduct (Eighth and Ninth Causes for Discipline). Additionally, the board sought recovery of the costs incurred for the investigation and prosecution of the case.
- 3. Respondent filed a Notice of Defense on February 10, 2012, and requested a hearing on the charges in the Accusation.

2010 Termination of Employment

- 4. Respondent was hired by Pioneers Memorial Hospital (hospital) as a licensed vocational nurse in September, 2008. She was assigned to the "float pool" where she worked in various departments of the hospital based upon her competencies and the needs of the departments.
- 5. On February 18, 2010, respondent was scheduled to work in the Medical Surgical Unit of the hospital, but she was seen on multiple occasions withdrawing medication in the automated medication dispensing station (Pyxis) located in the Emergency Room department.

Pyxis stations record information such as patient name, physician orders, date and time medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Respondent was an authorized user of Pyxis and had been assigned an individual identification code which was used to operate Pyxis' control panel and obtain medications prescribed for patients.

Attention was drawn to respondent's withdrawal of medication from the Emergency Room Pyxis machine because she was not assigned to the Emergency Room and the pharmacy in the Medical Surgical Unit where she was assigned, was open.

A review of the withdrawals from the Emergency Room Pyxis made by respondent on February 18, 2010, disclosed that respondent withdrew 100 mg of injectable Demerol three times for patients to whom she was not assigned and who were not in the Medical Surgical Unit.

6. Respondent was confronted by hospital personnel and admitted stealing six Demerol 50 mg syringes and self-injecting the 300 mg of Demerol she took. Respondent further admitted that she was addicted to pain medication and had been stealing drugs from the hospital for her personal use for six months. Respondent told hospital personnel that for the last six months of her employment she had been taking and using drugs every two hours.

In addition to Demerol, respondent stated that she took morphine sulfate on two occasions and Dilaudid on one occasion. Respondent stated that on February 18, 2010, she had taken so much Demerol that she could not recall what she did that day.

Respondent said she would obtain the drugs by making a list of patients who had orders for Demerol, entering their information into Pyxis, and removing the medication. In some instances respondent took the medication and did not make any entries on the patient's medical record; on other occasions, respondent obtained the medication and falsely charted the patient's medical record as though the medication had been administered to the patient.

- 7. An audit of respondent's narcotics withdrawals for a six month period revealed that respondent had obtained Ativan, Librium, Darvocet, Vicodin, Valium, Percocet, Duragesic, Restoril, Oxycontin, Limitil, Ambien, Xanax, Morphine Sulfate and Demerol without documenting that these drugs were administered to the patients for whom they were prescribed. On approximately 25 occasions, respondent withdrew medication from Pyxis for patients who were in units she was not assigned to, and entered into the patients' medical charts that the patients had received the medication. There were no circumstances that required respondent to obtain and administer medications for patients that were in a unit other than the one she was assigned to.
- 8. Respondent's employment was terminated by the hospital on or about February 24, 2010, and a report of respondent's drug use and theft of medication was sent to the board.

2011 Conviction for Theft

- 9. As a result of respondent's conduct on February 18, 2010, criminal charges were filed against her.
- 10. On November 17, 2011, in the Imperial County Superior Court, in case number BCM23655, respondent pled guilty to, and was convicted of, one misdemeanor count of theft in violation of Penal Code section 484, subdivision (a). In exchange for her plea, another misdemeanor count was dismissed and respondent was placed on three years of summary probation with certain terms and conditions, including a requirement that she pay fines and fees in the amount of \$170.

Matters in Aggravation

11. The Accusation alleges a prior conviction occurring in June of 2008, as a matter in aggravation.

On October 6, 2008, respondent pled guilty to, and was convicted of, one count of misdemeanor reckless driving, with alcohol involved, in violation of Vehicle Code section 23103.5. In exchange for her plea, two misdemeanor counts of driving while intoxicated were dismissed. Respondent was placed on three years probation, which had expired the

month before she was convicted for stealing drugs from the hospital. Respondent was ordered to, and did complete, a three month alcohol safety class.

12. By letter dated June 23, 2009, the board notified respondent that it had reviewed her conviction for alcohol related reckless driving and found it to be substantially related to her vocational nurse license. The board determined that it would not take disciplinary action against respondent's license at that time because she was complying with the terms of her probation and had no subsequent convictions. However, the board warned respondent that

you are officially advised that, as a licensed vocational nurse, you are responsible for behaving professionally, honestly and ethically. Future substantiated reports that you have engaged in similar behavior or otherwise violated the law or regulations governing your practice as a vocational nurse may result in disciplinary action against your license.

Consideration of the alleged matters in aggravation has been limited to determining the appropriate discipline in this case.

Evidence in Mitigation and of Rehabilitation

- 13. Respondent candidly admitted the allegations against her. Respondent admitted that she diverted drugs from the hospital for her own use and that she did so by getting a list of patients who had been prescribed the medications she wanted, obtaining those medications under the patients' names and falsely reporting on medical charts that the medications had been administered to the patients. Respondent further admitted that she is a drug addict and that, when she was diverting drugs from the hospital, she used drugs on a daily basis, sometimes every two hours.
- 14. Immediately after respondent was questioned by the hospital, she called her insurance plan and requested assistance for substance abuse. She testified that February 18, 2010, was the last time she took controlled substances that were not prescribed for her.

According to her statement given to a board investigator, respondent first attended a residential rehabilitation program for one week but left because she was not permitted to have her bible with her. Respondent testified that she was referred by her insurance company to a psychiatrist and a counselor with whom she began weekly sessions. She was prescribed an anti-depressant and had been seeing the psychiatrist and counselor for approximately one month when her insurance through the hospital was terminated and she could no longer afford the treatment. Respondent was referred to Narcotics Anonymous (NA). She attended NA for thirty days; attending a meeting every day for the first twenty days.

- 15. Thirty-nine days after she was "walked off the hospital" respondent realized that her substance abuse and depression made her unable to properly care for her two children and she assigned her rights to them to her ex-husband.
- 16. On April 1, 2010, respondent was admitted to Impact Drug and Alcohol Treatment Center (Impact). Her first thirty days were paid by her ex-husband's insurance and she was granted an exemption for the remainder of the program. Respondent remained a resident at Impact until she finished the program on September 8, 2010. Twelve random drug tests taken at Impact resulted in a "negative" finding for drugs or alcohol.

After graduating from the Impact program, respondent continued for approximately two months in their internship program where she took courses regarding case management and substance abuse. Respondent did not complete the internship program as it required very long hours and respondent wanted to obtain a job and work towards reuniting with her children.

17. On November 17, 2010, respondent moved into the Moore House Sober Living in Pasadena, California. To reside in Moore House respondent was required to enter into an agreement providing, among other things, that

[o]ccupancy is made available on the strict understanding that the unit is to be, at all time, drug and alcohol free. Should the resident use any illicit drug, consume alcohol, or take drugs not prescribed by a physician, and cleared through the Executive Director the resident will be discharged from the sober living component and is required to vacate immediately.

Residents of the Moore House were required to attend a minimum of three NA/AA/CA meetings per week and agree to submit to random urinalysis tests. Although the contract stated that it was intended that residents stay at Moore House for six months, respondent remained there until June 1, 2012.

18. On January 17, 2011, respondent obtained full-time employment with S & S Management, Inc. as a case manager. In this position, respondent was responsible for conducting an overview of patient needs and tracking patient progress from a hospital to acute care, skilled nursing, home health care or other medical care. She tracked medical recovery such as following doctor's orders, how long it took to implement the doctor's order, the discharge plan, and family education of medical needs required by a family member. Respondent contacted nurses and doctors to discuss patient care, including ascertaining what the next plan of care would be for the patient. Respondent performed her job duties through communication with medical insurance companies and physician groups by phone, facsimile, or computer; she had no contact with patients or medications. Respondent was required to have a valid vocational nurse license for the position. Respondent was laid off from her position on August 31, 2012. In a letter dated October 12, 2011, respondent's supervisor, Michelle S. Black, wrote:

I have been impressed with [respondent's] enthusiasm, communication skills and professional demeanor. I found her to be consistently pleasant, tackling all assignments with dedication and a smile.

Besides begin pleasant to work with, Samantha has been a take-charge person who is able to present creative ideas and communicate the benefits. During the course of her work, Samantha has been able to offer S & S Management exceptional quality care that has lead to excellent results always with the utmost professionalism. Samantha is a highly motivated person with outstanding people skills who has developed and excellent rapport with our staff and the providers we service. She possesses analytical skills to diagnose problems and devise viable solutions.

The letter does not indicate whether Black was aware of respondent's substance abuse and criminal charges. S & S Management, Inc. helped respondent take case management courses; she is currently on the fourth of five classes. From June 2011 to February 2012, respondent took 70 hours of continuing education courses in case management, including charting and documentation. Once respondent completes the five classes she is eligible to take a state test for case management certification.

In order to continue in case management occupations, respondent must retain her vocational nurse license. Respondent suggested that she could be as effective a vocational nurse in an administrative setting, such as working as a case manager, patient advocate, or other similar position, that did not require her to administer narcotic medications, as she could be if she were working directly with patients.

19. Respondent submitted six character references that were originally submitted to the criminal court with reference to the criminal charges against her in 2011. Respondent stated that the authors of the letters are members of NA and that she remains in contact with them all. Comments from the character references include:

"Being a long-time member of NA, it is easy to spot those who are genuinely involved and committed to their own recovery. I can say without reservation Samantha is one of those people . . ."

"[Samantha] is loyal, caring, honest and very much trustworthy She has obtained full-time employment in which she displays integrity, dignity and a sense of responsibility."

"Samantha is a good example of what Narcotics Anonymous is all about"

"She has become an example of kindness, compassion, responsibility, and most of all integrity."

"Samantha is actively involved in the 12-step fellowship of Narcotics Anonymous and is a positive role model for new people in recovery. I am impressed with how Samantha has taken the initiative to better her life. I feel these attribute demonstrate someone with exceptional character."

Lea Ross, Technician, Cri-Help wrote:

Samantha is dedicated to her program and is an active participant in her recovery. She has remained clean and sober and is celebrating 18 months of continuous recovery. Is gainfully employed full-time and has established regular contact with her daughters.

Samantha has shown the dedication and commitment needed to change her life and be responsible and caring of others by volunteering for service commitments and sponsoring others in the program of recovery. Samantha is very well liked as home and on her job and has a support system that will continually help her to stay on her new found path.

She has personally expressed to me her regret of her past actions and her gratitude and willingness to live in accordance with all laws and society.

- 20. Respondent testified that she has, and is, making an effort to address the "wreckage" that she created in the past. She stated that after one year of sobriety, in February 2011, she received a telephone call from her father telling her that law enforcement officials told him a criminal complaint had been filed against her and had come to his home to arrest her. Respondent testified that she was unaware that a criminal complaint had been issued or that law enforcement had been trying to reach her. Respondent made arrangements to address and resolve the criminal charges, paid the fines assessed, and is in compliance with the terms of her probation.
- 21. Respondent spoke with pride of the "remarkable" progress that she has made since February 2010. She has regained custody of her daughters and is in a stable relationship with a correctional officer, with whom she lives. She has been unable to secure re-employment after being laid off from S & S; she had an offer from one company, but was not hired after the background check disclosed her criminal conviction. She is continuing to seek employment and, in the meantime, receives unemployment compensation in the amount of \$321 per week. Additionally, respondent's ex-husband recently filed a claim for child support for their youngest daughter.

Respondent remains active in NA; she attends twice a week. She also serves as secretary for a women's meeting on Wednesdays and has been involved on other NA committees.

Respondent stated that she does not believe she would have difficulty abstaining from drugs or alcohol, even if she was in a setting where she might have access to controlled substances. She has developed the tools to cope with stress and to be strong in her resolve to stay clean and sober. She believes she did not have those tools in February of 2010. When she was interning at Impact, respondent did have some access to limited medications; she administered medications in tablet form to residents of Impact for a short time with no adverse consequences.

Costs

22. The board seeks recovery of costs in a total amount of \$16, 438 pursuant to Business and Professions Code section 125.3. This amount is claimed to be the reasonable costs of investigation and prosecution of the instant matter against respondent. The board seeks \$8,048 for costs of an investigation performed by the Division of Investigation and \$8,410 (\$7,710 through the October 23, 2012 and \$680 in estimated costs through hearing) for services rendered by the Attorney General's office in prosecuting the case.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

- 1. Business and Professions Code section 482 requires the Board to "develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490." Section 482 also requires the Board to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."
 - 2. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

3. Business and professions Code section 493 provides in relevant part, that in a proceeding to revoke or suspend a license

upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

- 4. Business and professions Code section 2878 provides that the board may suspend or revoke a license for unprofessional conduct, including, but not limited to, "(a) Unprofessional conduct . . ." and "(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction."
 - 5. Business and professions Code section 2878.5 provides:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.
- (b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.
- 6. Business and professions Code section 2878.6 provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

- 7. Health & Safety Code section 11350, subdivision (a)(1) provides that it is unlawful to possess a controlled substance unless it is upon the written prescription of a licensed physician, or other specified licensed professional.
 - 8. Health & Safety Code section 11350 provides, in part;
 - (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
 - (b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

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- 9. Health & Safety Code section 11173 provides:
 - (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
 - (b) No person shall make a false statement in any prescription, order, report, or record, required by this division.
 - (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.
 - (d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

- 10. California Code of Regulations, title 16, section 2518.5 provides in part:
 - 2518.5The licensed vocational nurse performs services requiring technical and manual skills which include the following:
 - (a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and contributes to evaluation of individualized interventions related to the care plan or treatment plan.
 - (b) Provides direct patient/client care by which the licensee:
 - (1) Performs basic nursing services as defined in subdivision (a);
 - (2) Administers medications;
 - (3) Applies communication skills for the purpose of patient/client care and education; and
 - (4) Contributes to the development and implementation of a teaching plan related to self-care for the patient/client.
- 11. California Code of Regulations, title 16, section 2518.6 provides:
 - (a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions that include but are not limited to the following:
 - (1) Reporting to the Board acts specified in Sections 2878 and 2878.5 of the Business and Professions Code;
 - (2) Documenting patient/client care in accordance with standards of the profession; and
 - (3) Performing services in accordance with Section 125.6 of the Business and Professions Code.
 - (b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:
 - (1) Maintaining current knowledge and skills for safe and competent practice;
 - (2) Maintaining patient/client confidentiality;
 - (3) Maintaining professional boundaries with the patient/client;
 - (4) Abstaining from chemical/substance abuse; and

- (5) Cooperating with the Board during investigations as required by Section 2878.1 of the Business and Professions Code.
- (c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

12. California Code of Regulations, title 16, section 2521 provides in part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

13. California Code of Regulations, title 16, section 2522 provides:

When considering . . . (b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime . . . the Board, in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

Application of Facts and Law

First Cause for Discipline

14. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 pursuant to Business and Professions Code sections 490 and 2878 subdivision (f), because respondent was convicted of the crime of theft which stemmed from respondent stealing controlled substances from her employer which she unlawfully used while working. There is no question, nor can there be reasonable dispute, that respondent's criminal conviction is substantially related to the qualifications, functions, or duties of a licensed vocational nurse. (Cal. Code Regs., tit. 16, § 2521.) A vocational nurse is a position that requires trustworthiness, clear-headedness and the exercise of impeccable judgment. Respondent demonstrated none of these characteristics in her admitted conduct from August 2009 to February 18, 2010. Although no evidence of actual detriment to patients was presented, the potential for detriment to patients was clearly present, not only because respondent was responsible for their health care while she was incapable of fulfilling her duties, but also because she made false entries into patient records indicating that they had been administered medication that they had not received.

Second Cause for Discipline

15. Cause exists for discipline of respondent's Vocational Nurse License Number 230030 pursuant to Business and Professions Code section 2878.5, subdivision (c), because respondent was convicted of the crime of theft which stemmed from respondent stealing controlled substances from her employer which she unlawfully used while working. Respondent's conviction involves her possession, and self-administration, of controlled substances and dangerous drugs.

Third Cause for Discipline

16. Cause exists for discipline of respondent's Vocational Nurse License Number 230030 pursuant to Business and Professions Code section 2878.5, subdivision (a), because respondent admitted that she unlawful obtained and possessed controlled substances in violation of Health and Safety Code section 11350, subdivision (a), subsection (1) and section 1173, subdivision (a) by stealing them from her employer.

Fourth Cause for Discipline

17. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 pursuant to Business and Professions Code section 2878.5, subdivision (b), because respondent admitted that she unlawfully self-administered controlled substances she obtained by stealing them from her employer from August 2009 through February 18, 2010. The amount of controlled substances she consumed caused her to become addicted to narcotics. On February 18, 2010, respondent self-injected 300 mg of Demerol such that she could not remember what she had done that day and had thus endangered herself and her

patients. Furthermore, the potential for detriment to patients was clearly present, not only because respondent was responsible for their health care while she was incapable of fulfilling her duties, but also because she made false entries into patient records indicating that they had been administered medication that they had not received, thus potentially depriving them of needed medications.

Fifth Cause for Discipline

18. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 for unprofessional conduct pursuant to Business and Professions Code section 2878.5, subdivision (c), because respondent admitted stealing narcotics or dangerous drugs from her employer from August 2009 to February 18, 2010. Respondent also admitted falsifying and making grossly incorrect entries in hospital records by withdrawing medications prescribed for patients, self-administering those medications and falsely charting that the medication had been administered to the patients, thus potentially depriving them of needed medications.

Sixth Cause for Discipline

19. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 for unprofessional conduct pursuant to California Code of Regulations, title 16, section 2518.6, subdivision (a), subsection (2), because respondent admitted stealing narcotics or dangerous drugs from her employer from August 2009 to February 18, 2010. Respondent also admitted falsifying and making grossly incorrect entries in hospital records by withdrawing medications prescribed for patients, self-administering those medications and falsely charting that the medication had been administered to the patients, thus potentially depriving them of needed medications.

Seventh Cause for Discipline

20. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 for unprofessional conduct pursuant to California Code of Regulations, title 16, section 2518.6, subdivision (b), subsection (4), because respondent failed to abstain from chemical and substance abuse when, from August 2009 to February 18, 2010, she stole narcotics or dangerous drugs from her employer and self-administered those drugs. On at least one day, respondent had self-injected so much medication that she did not know what she had done that day. Her conduct endangered herself and her patients.

Eighth Cause for Discipline

21. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 pursuant to Business and Professions Code section 2878, subdivision (a), because respondent unlawfully obtained, possessed and used controlled substances while on duty at the hospital and falsely charted the administration of those drugs.

Ninth Cause for Discipline

22. Cause exists for discipline of respondent's Vocational Nurse License Number VN 230030 pursuant to Business and Professions Code section 2878, subdivision (j), because respondent stole controlled substances from her employer under the guise that they were medications prescribed for specific patients. Respondent then administered the medication to herself and falsely documented that the medication had been administered to the patient.

Level of Discipline

23. The determination as to whether respondent's license should be revoked or suspended turns upon the application of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 2522. Additionally, the board's Disciplinary Guidelines have been considered in reaching the determination of the appropriate level of discipline.

Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Thus, before an addict can return to practice, she must present reliable evidence that her long-standing addiction is permanently under control and that she has undergone a meaningful and sustained period of successful rehabilitation. Her own verbal assurances that she will never drink or take drugs again are not sufficient proof that she has overcome a history of alcohol and drug abuse. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1118.)

- 24. Respondent's conduct and criminal convictions are very serious. Potential harm to patients was a likely and foreseeable consequence of respondent's actions. Respondent had one prior warning from the board relating to a criminal conviction for DUI in 2008. Respondent has complied with the terms and conditions of her court-ordered probation, however, she has only served one year of her probation; her probation will not expire until 2014. Nonetheless, it has been 2 years and 9 months since respondent was found under the influence of stolen narcotics at work and she has been clean and sober since that date.
- 25. The conduct committed by respondent was so egregious that it is astonishing that she retained her license to this point. However, the board took no action to immediately suspend her license and respondent has taken substantial, voluntary steps to rehabilitate and become, and stay, clean and sober. In fact, while the criminal justice system waited nearly a year before charging her, and enforcing the criminal complaint, respondent voluntarily

attended NA, sought medical and psychological help, gave custody of her children to her exhusband because she knew she could not care for them in her condition, and entered a residential rehabilitation program. After successfully completing that program, respondent voluntarily entered a housing situation where she agreed to remain clean and sober and to live under strict rules and supervision. Respondent obtained employment which made use of the education and experience she obtained with her vocational nurse license, but in which she did not have direct patient contact, and had no contact with medications. Respondent has been able to reunite with her daughters and is currently in a stable relationship. Respondent continues to attend NA and is in a leadership position within her branch. While her actions from August 2009 to February 2010 were egregious, her actions since that day demonstrate strength of character and a firm commitment to sobriety.

- 26. Generally, little weight is placed on the fact that an individual, still on probation, did not commit additional crimes or continue inappropriate behavior while they were under the court's supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) However, the purpose of an administrative disciplinary proceeding involving a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) In this case, respondent has been clean and sober for almost three years, despite that she was not under probationary supervision for a majority of that time.
- 27. In this case, substantial credible evidence was introduced at hearing that respondent has made significant progress in her rehabilitation. Upon consideration of the entirety of the facts and the application of the disciplinary criteria, protection of the public will not be compromised if respondent is granted a probationary license that limits the work environments respondent may work in while her license is on probationary status.

Costs

28. Pursuant to Business and Professions Code section 125.3, the board may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. The board seeks costs incurred in connection with this matter in the amount of \$16,438. The amount requested is excessive. Recognizing that the board needed to investigate all possible ramifications of respondent's conduct, the fact remains that respondent immediately cooperated and admitted her wrongdoing and the length of time she engaged in this conduct. A reasonable amount of costs to investigate and prosecute this matter is \$7,500.

Under Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, the board must exercise discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." *Id.* at 44. The Supreme Court

set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. *Id.* at 45. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

Respondent obtained a reduction in the level of discipline that complainant sought. Additionally, there was evidence that respondent lacks the present ability to pay the full cost recovery amount because she was laid off from her employment and is receiving only \$321 per week in unemployment benefits at this time. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is reasonable to require respondent to pay one third of the costs to investigate and enforce the Accusation against respondent. Thus, respondent must pay the sum of \$2,500 to the board.

ORDER

1. License Number VN 230030 issued to Samantha Darlene Celaya, aka Samantha Darlene Woelke, aka Samantha Darlene Pena is revoked; however, the revocation is stayed and respondent is placed on probation for a period of four years under the terms and conditions detailed below:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program.

Upon successful completion of probation, the respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period she resides or practices outside of California. The

respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify her employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work under her license for a hospital, clinic, medical office, outpatient or inpatient program, nurses' registry or in any private duty position, a temporary

nurse placement agency, or any other similar facility or business in which Respondent could have access to, or be responsible for the administration of, narcotics, controlled substances or dangerous drugs during the period of probation, except as approved in writing by the board. Respondent shall not work as a faculty member in an accredited or approved school of nursing or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to the respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

11. COST RECOVERY REQUIREMENTS

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$2,500.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by respondent shall not relieve respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

If respondent has not complied with this condition during the probationary period, and respondent presents sufficient documentation of his/her good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives

may, upon written request from the respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. LICENSE SURRENDER

During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or

One (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If respondent violates the conditions of her probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline, which is revocation of the respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

14. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

15. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

16. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

17. NO DRIVING AFTER CONSUMPTION OF ALCOHOL

Respondent shall not operate a motor vehicle with any measurable blood alcohol content, regardless of whether the blood alcohol content would be considered within acceptable limits by state law.

18. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer. Requests for biological fluid testing can occur as often as once per month for the first year of probation and four times per year the second year of probation.

DATED: January 25, 2013

Administrative Law Judge

Office of Administrative Hearings

Kamala D. Harris JAN 3 0 2012 Attorney General of California 2 JAMES M. LEDAKIS Supervising Deputy Attorney General Board of Vecational Nursing 3 MARICHELLE S. TAHIMIC and Psychiatric Technicians Deputy Attorney General 4 State Bar No. 147392 110 West "A" Street, Suite 1100 San Diego, CA 92101 5 P.O. Box 85266 6 San Diego, CA 92186-5266 Telephone: (619) 645-3154 7 Facsimile: (619) 645-2061 Attorneys for Complainant 8 **BEFORE THE** 9 BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS 10 STATE OF CALIFORNIA 11 In the Matter of the Accusation Against: Case No. VN-2009-3374 12 SAMANTHA DARLENE CELAYA, AKA SAMANTHA DARLENE WOELKE, AKA 13 SAMANTHA DARLENE PENA ACCUSATION 943 North Marengo Avenue 14 Pasadena, CA 91103 15 Vocational Nurse License No. VN 230030 16 Respondent. 17 Complainant alleges: 18 19 **PARTIES** 20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in 21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric 22 Technicians, Department of Consumer Affairs. 23 2. On or about September 28, 2007, the Board of Vocational Nursing and Psychiatric 24 Technicians issued Vocational Nurse License Number VN 230030 to Samantha Darlene Celaya, 25 aka Samantha Darlene Woelke, aka Samantha Darlene Pena (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will 26 27 expire on February 28, 2013, unless renewed.

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JURISDICTION

- 3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.
- 5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY AND REGULATORY PROVISIONS

- 6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.
 - 7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee....

9. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.
- (b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).

10. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

	11.	Section 11032 of the Health and Safety Code provides, in pertinent part, that the term
"narco	otics"	means controlled substances classified in Schedule I or II as defined in section 11054
or 11(055 of	f that code.

- 12. Section 11032 of the Health and Safety Code provides, in pertinent part, that the term "restricted dangerous drugs" means controlled substances classified in Schedules III and IV as defined in sections 11056 and 11057 of that code.
- 13. Section 11350(a)(1) of the Health and Safety Code provides that it is unlawful to possess a controlled substance unless upon the written prescription of a licensed physician, dentist, podiatrist, or veterinarian.
- 14. Section 11173(a) of the Health and Safety Code provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation or subterfuge or by concealment of a material fact.
 - 15. California Code of Regulations, title 16, section 2518.5, states:

The licensed vocational nurse performs services requiring technical and manual skills which include the following:...

- (b) Provides direct patient/client care by which the licensee:...
- (2) Administers medications....
- 16. California Code of Regulations, title 16, section 2518.6, states:
 - (a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by actions that include but are not limited to the following;...
 - (2) Documenting patient/client care in accordance with standards of the profession; and,...
 - (b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:...
 - (4) Abstaining from chemical/substance abuse;...
 - (c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those

- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code...
- (f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of

COST RECOVERY

Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

DRUGS

- Demerol is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(2) and a dangerous drug per Business and Professions Code section 4022. Demerol is a brand name for the generic drug meperidine and is used to treat pain.
- Dilaudid, a brand name for hydromorphone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(k) and is a dangerous drug pursuant to
- Morphine/morphine sulfate is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and is a dangerous drug pursuant to Business and Professions Code section 4022. Morphine is in a class of drugs called morphine analysics. It relieves pain.

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FACTS

- 22. J.C. of Pioneers Memorial Hospital (hereinafter "the Hospital") filed a complaint with the Board on March 17, 2010 reporting the termination of Respondent's employment with the Hospital for the admitted use of controlled substances during her shift and theft from patients.
- 23. Respondent was employed at the Hospital as a licensed vocational nurse since September 8, 2008. She was assigned to work in the "float pool." As such, Respondent's assignments varied depending on her particular competencies and where she was needed.
- 24. On February 18, 2010, Respondent was scheduled to work in the Medical Surgical Unit however, she was observed withdrawing medication at the Pyxis¹ MedStation located in the Emergency Room on multiple occasions. Respondent was observed holding something in her hand and then going into the restroom. Since Respondent was working in the Medical Surgical Unit and the pharmacy in the Medical Surgical Unit was open, there was no reason for Respondent to withdraw medication from the Pyxis MedStation in the Emergency Room.
- 25. A review of Respondent's Pyxis withdrawals that day showed that Respondent withdrew 100 mg of injectible Demerol from Pyxis in the Emergency Room 3 times during her shift and that each withdrawal was under the names of patients to whom she was not assigned and were not in the Medical Surgical Unit as follows:

Patient	Withdrawn by	Quantity	Physician	Charted	Wastage	Discrepancy
	Respondent		Orders	as given	Noted	
A	Demerol 50 mg IM	2	Yes	No	No	2-50 mg
	@ 1123 hours on					Demerol
	2/18/2010					
В	Demerol 50 mg IM	2	Yes	No	No	2-50 mg
	@ 0934 hours on					Demerol
	2/18/2010			×		×
С	Demerol 50 mg IM	2	Yes	No	No	2-50 mg
	@ 1453 hours on					Demerol
	2/18/2010					

¹ Pyxis is a trade name for the automatic single-unit dose medication dispensing system that records information such as patient name, physician orders, date and time medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a user identification code to operate the control panel. Sometimes only portions of the withdrawn narcotics are given to the patient. The portions not given to the patient are referred to as "wastage." This waste must be witnessed by another authorized user and is also recorded by the Pyxis machine.

26. When confronted, Respondent admitted to diverting six Demerol 50 mg syringes on February 18, 2010 and that she self-injected a total of 300 mg Demerol that she diverted. She admitted that she was addicted to pain medication and had been diverting drugs from the Hospital for the past six months, again for her personal use. Respondent stated that she would make a list of patients who had orders for Demerol and would remove the Demerol from the Pyxis MedStation in the Emergency Room. She chose Demerol because she could obtain this injectible drug as an LVN; as an LVN she cannot obtain intravenous drugs. She started diverting drugs from the Hospital in August, 2009. During the first month, she diverted and used once every 2 weeks. During the last six months of her employment, she diverted and used daily approximately every two hours. She took the drugs for her own use. She also admitted to diverting morphine sulfate on approximately two occasions and Dilaudid on approximately one occasion. She stated that on February 18, 2010, she used so much of the Demerol that she could not recall what she did that day.

27. An audit of Respondent's narcotics withdrawals for the period August 1, 2009 through February 10, 2010 was conducted and revealed that Respondent withdrew the following medication but failed to document administration of 4 Ativan, 2 Librium, 1 Darvocet-N, 6 Vicodin, 1 Valium, 4 Percocet, 5 Demerol, 2 Duragesic, 2 Restoril, 1 Oxycontin, 2 Lomitil, 1 Ambien, 1 Xanax and 1 Morphine Sulfate as follows:

Date	Patient (MR #)	Withdrawn by Respondent but not charted as administered		
8/1/2009	329	1 Ativan		
8/4/2009	853	1 Ativan		
8/5/2009	856	1 Librium		
8/21/2009	822	1 Darvocet-N		
8/23/2009	539	1 Librium		
9/6/2009	224	1 Vicodin		
9/23/2009	919	1 Valium		
9/25/2009	913	1 Percocet		
"	300	1 Percocet		
"	194	1 Percocet		
٠, ٠,	935	1 Percocet		
"	935	1 Demerol		
9/28/2009	612	1 Demerol		
10/19/2009	070	1 Demerol		

		The **
10/24/2009	018	1 Duragesic
10/31/2009	096	1 Restoril
11/4/2009	314	1 Vicodin
"	453	1 Demerol
cc cc	314	1 Oxycontin
11/9/2009	385	1 Vicodin
٠٠ د٠	385	1 Ativan
11/11/2009	769	1 Vicodin
٠٠ ٠٠	769	1 Lomitil
11/12/2009	769	1 Vicodin
£¢ £¢	769	1 Lomitil
11/14/2009	845	1 Ambien
11/17/2009	539	1 Xanax
cc cc	539	1 Morphine sulfate
11/28/2009	062	1 Restoril
12/16/2009	656	1 Duragesic
12/23/2009	160	1 Demerol
1/7/2010	404	1 Vicodin
1/24/2010	696	1 Ativan

- 28. Respondent withdrew medication for patients who were not in her care and charted administration of these controlled substances to them as follows:
 - a. On December 15, 2010, Respondent withdrew Ambien and Vicodin for two patients MR # ---519 and ---681, respectively, who were in the Medical Surgical Unit. Respondent was not assigned to this unit however, she charted administration of this medication to them.
 - b. On January 26, 2010, Respondent withdrew Demerol for patient MR # ---933, who was in a unit to which she was not assigned and charted administration of this medication.
 - c. On January 27, 2010, Respondent withdrew Demerol for patient MR # ---683, who was in a unit to which she was not assigned and charted administration of this medication.
 - d. On January 28, 2010, Respondent withdrew Demerol for two patients, MR # ---683 and MR # ---037, who were in a unit to which she was not assigned and charted administration of this medication.
 - e. On February 4, 2010, Respondent withdrew Demerol for patient MR # ---8833, who was in a unit to which she was not assigned and charted administration of this medication.

- f. On February 5, 2010, Respondent withdrew Demerol for three patients, MR # ---979,
 ---082 and ---838, who were in a unit to which she was not assigned and charted administration of this medication.
- g. On February 6, 2010, Respondent withdrew Demerol for two patients, MR # ---979 and ---838, who were in a unit to which she was not assigned and charted administration of this medication twice to Patient # ---979 and once to Patient # ---838.
- h. On February 9, 2010, Respondent withdrew Demerol for four patients, MR # ---932,
 ---082, ---193, and ---684, who were in a unit to which she was not assigned and charted administration of this medication twice to Patient # ---082 and once to the others.
- i. On February 10, 2010, Respondent withdrew Demerol for two patients, MR #---990 and ---684, who were in a unit to which she was not assigned and charted administration of this medication twice to Patient #---990 and once to Patient #---684.
- j. On February 6, 2010, Respondent withdrew 1 Demerol from the Pyxis MedStation in the Emergency Room but charted administration to <u>two</u> patients, MR # ---082 and ---102 in the Medical Surgical Unit where she was assigned.
- 29. Based on the incident on February 18, 2010, charges were filed against Respondent. On November 10, 2010 in *The People of the State of California vs. Samantha Ceyla Pena* (corrected by the court to state "Celaya") in the Imperial County Superior Court, Brawley Department, Case No. BCM23655, Respondent was charged with embezzlement by a public or private officer in violation of Penal Code Section 504.F1/17(b).
- 30. On November 17, 2011, Respondent was convicted on her guilty plea to violation of Penal Code section 484(a), theft. As a result of her conviction, Respondent was sentenced to 3 years probation and ordered to pay a fine in the amount of \$170.00.

FIRST CAUSE FOR DISCIPLINE

(November 17, 2011 Conviction of Theft on February 18, 2010)

31. Respondent is subject to disciplinary action under Code sections 490 and 2878, subdivision (f) for conviction of a crime substantially related to the qualifications, functions and duties of a licensed vocational nurse in that Respondent was convicted on her guilty plea of theft

in violation of Penal Code section 484(a) in *The People of the State of California vs. Samantha Ceyla Pena (corrected to state "Celaya")*, Imperial County Superior Court, Brawley Department, Case No. BCM23655, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full. The conviction arose from Respondent's diversion of 300 mg of injectible Demerol, a controlled substance, from her employer and under the pretense of administering the medication to a patient.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conviction Involving Possession of Narcotic or Dangerous Drug)

32. Respondent is subject to disciplinary action under Code section 2875, subdivision (c) for conviction of a crime involving possession of any narcotic or dangerous drug in that Respondent was convicted on her guilty plea of theft in violation of Penal Code section 484(a) in *The People of the State of California vs. Samantha Ceyla Pena (corrected to state "Celaya"*), Imperial County Superior Court, Brawley Department, Case No. BCM23655, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full. The conviction arose from Respondent's diversion of 300 mg of injectible Demerol, a controlled substance, on February 18, 2010 from her employer.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Obtaining or Possessing Controlled Substances)

33. Respondent is subject to disciplinary action under Code section 2878.5, subdivision (a), for unlawfully obtaining and possessing controlled substances in violation of Health and Safety Code sections 11350(a)(1) and 11173(a), when Respondent diverted Demerol, morphine sulfate and Dilaudid, from the Hospital between the period August 1, 2009 and February 18, 2010, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Controlled Substances)

34. Respondent is subject to disciplinary action under Code section 2878.5, subdivision (b), for use of controlled substances in a manner dangerous to herself or the public in that

between the period August 1, 2009 and February 18, 2010, Respondent diverted and used Demerol, morphine sulfate and Dilaudid while she was on duty at the Hospital such that she became addicted to narcotics and, on February 18, 2010, after self-injecting 300 mg of Demerol, could not remember what she did that day, thereby endangering herself and her patients, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Falsify or Make Grossly Incorrect Entries)

35. Respondent is subject to disciplinary action under Code section 2878.5, subdivision (e), for unprofessional conduct in falsifying or making grossly incorrect entries in hospital records regarding narcotics or dangerous drugs in that between the period August 1, 2009 and February 18, 2010, Respondent withdrew Demerol, morphine sulfate, Dilaudid, and other controlled substances, from Pyxis allegedly for administration to hospital patients when in fact she self-administered these drugs and did not administer them to the patients for whom she recorded their withdrawal from Pyxis. In addition, Respondent withdrew controlled substances from Pyxis under the names of patients who were not in her care and charted administration of this medication to these patients, endangering these patients by leading others who reviewed their charts to believe they had been medicated, when in fact Respondent diverted these drugs, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Failing to Document Patient Care)

36. Respondent is subject to disciplinary action under title 16, California Code of Regulations, section 2518.6, subdivision (a)(2), for unprofessional conduct for failing to document patient care in accordance with the standards of the profession by charting administration of controlled substances to patients when in fact she self-administered these drugs and did not administer them to the patients for whom she recorded their withdrawal from Pyxis, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

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SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Failing to Abstain from Chemical/Substance Abuse)

37. Respondent is subject to disciplinary action under title 16, California Code of Regulations, section 2518.6, subdivision (b)(4), for unprofessional conduct for failing to abstain from chemical and substance abuse in that between the period August 1, 2009 and February 18, 2010, Respondent diverted Demerol, morphine sulfate, Dilaudid, and other controlled substances for her personal use, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

38. Respondent is subject to disciplinary action under Code section 2878, subdivision (a), for unprofessional conduct in that between the period August 1, 2009 and February 18, 2010, Respondent unlawfully obtained, possessed and used controlled substances while on duty at the Hospital and falsely charted the administration of these drugs, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

NINTH CAUSE FOR DISCIPLINE

(Commission of Act Involving Dishonesty)

39. Respondent is subject to disciplinary action under Code section 2878, subdivision (j), for the commission of acts involving dishonesty in that between the period August 1, 2009 and February 18, 2010 Respondent withdrew controlled substances from Pyxis under the names of certain patients but rather than administering the medication to them, Respondent administered the medication to herself, while documenting its administration to the patient, as more fully set forth in paragraphs 22-30 above and incorporated herein as though set forth in full.

DISCIPLINE CONSIDERATIONS

40. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on October 6, 2008 in *The People of the State of California vs. Samantha Darlene Celaya*, Imperial County Superior Court, Brawley Department, Case No. BCM18660, Respondent was convicted on her guilty plea of reckless driving involving the